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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 3 Session of 2019

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INTRODUCED BY CUTLER, DERMODY, PICKETT, DeLUCA, WHEELAND, SCHMITT, ROTHMAN, MOUL, MILLARD, BIZZARRO, BOYLE, BRADFORD, BRIGGS, BULLOCK, BURGOS, BURNS, CALTAGIRONE, CARROLL, CEPHAS, CIRESI, COMMITTA, CONKLIN, DALEY, DAVIDSON, A. DAVIS, T. DAVIS, DEASY, DELLOSO, DONATUCCI, FLYNN, FRANKEL, FREEMAN, GAINNEY, GALLOWAY, GOODMAN, HANBIDGE, HARKINS, HARRIS, HILL-EVANS, HOWARD, INNAMORATO, ISAACSON, JOHNSON-HARRELL, KIM, KINSEY, KIRKLAND, KORTZ, KOSIEROWSKI, KRUEGER, KULIK, LONGIETTI, MALAGARI, MARKOSEK, MATZIE, McCARTER, McCLINTON, McNEILL, MERSKI, MULLERY, MULLINS, NEILSON, O'MARA, PASHINSKI, RAVENSTAHL, READSHAW, ROEBUCK, ROZZI, SAINATO, SANCHEZ, SCHLOSSBERG, SHUSTERMAN, SIMS, SNYDER, SOLOMON, STURLA, WARREN, WEBSTER, WHEATLEY, ZABEL, FITZGERALD, ULLMAN, VITALI AND WILLIAMS, JUNE 4, 2019

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REFERRED TO COMMITTEE ON INSURANCE, JUNE 4, 2019

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AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated  
2 Statutes, providing for health insurance markets oversight;  
3 and establishing the Pennsylvania Health Insurance Exchange  
4 Fund.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a part to read:

9 PART V

10 HEALTH INSURANCE MARKETS OVERSIGHT

11 Chapter

12 91. Preliminary Provisions

13 93. State-based Exchange

1     95. Reinsurance Program

2     97. Miscellaneous Provisions

3                             CHAPTER 91

4                             PRELIMINARY PROVISIONS

5     Sec.

6     9101. Scope of part.

7     9102. Purpose and intent.

8     9103. Definitions.

9     § 9101. Scope of part.

10       This part relates to health insurance markets oversight.

11     § 9102. Purpose and intent.

12       The General Assembly finds and declares as follows:

13             (1) The Commonwealth intends to maintain the  
14             Commonwealth's sovereignty over the regulation of health  
15             insurance in this Commonwealth.

16             (2) The health insurance marketplace in this  
17             Commonwealth is unique and unlike the marketplace in any  
18             other state.

19             (3) It is necessary to maintain the Commonwealth's  
20             sovereignty over the regulation of health insurance in this  
21             Commonwealth as permitted by Federal law, including the  
22             Federal acts. The provisions of this part are intended to  
23             meet these requirements while retaining the Commonwealth's  
24             authority to regulate health insurance in this Commonwealth.

25     § 9103. Definitions.

26       Subject to additional definitions contained in subsequent  
27       provisions of this part which are applicable to specific  
28       provisions of this part, the following words and phrases when  
29       used in this part shall have the meanings given to them in this  
30       section unless the context clearly indicates otherwise:

1 "Affordable Care Act." The Patient Protection and Affordable  
2 Care Act (Public Law 111-148, 124 Stat. 119), as amended by the  
3 Health Care and Education Reconciliation Act of 2010 (Public Law  
4 111-152, 124 Stat. 1029).

5 "Attachment point." The threshold amount for claims costs  
6 incurred by an eligible insurer for an enrolled individual's  
7 covered benefits in a benefit year, above which the claims costs  
8 for benefits are eligible for reinsurance payments under this  
9 part.

10 "Benefit year." The calendar year during which an eligible  
11 insurer provides coverage through a health care plan.

12 "Board." The governing body of the exchange authority.

13 "Children's Health Insurance Program." The children's health  
14 insurance program under Article XXIII-A of the act of May 17,  
15 1921 (P.L.682, No.284), known as The Insurance Company Law of  
16 1921.

17 "Coinsurance rate." The percentage rate at which the  
18 reinsurance program will reimburse an eligible insurer for  
19 claims incurred for an enrollee's covered benefits in a benefit  
20 year above the attachment point and below the reinsurance cap.

21 "Commissioner." The Insurance Commissioner of the  
22 Commonwealth.

23 "Department." The Insurance Department of the Commonwealth.

24 "Eligible insurer." An insurer offering reinsurance-eligible  
25 health insurance plans to consumers in this Commonwealth.

26 "Enrollee." A policyholder, certificate holder, subscriber,  
27 covered person or other individual who is enrolled to receive  
28 health care services pursuant to a health insurance policy.

29 "Exchange." A health insurance exchange as contemplated by  
30 section 1321(b) of the Affordable Care Act, established or

1 operating in this Commonwealth, that facilitates or assists in  
2 facilitating enrollment in qualified plans.

3 "Exchange assister." The term has the meaning given to it in  
4 section 2 of the act of June 19, 2015 (P.L.25, No.7), known as  
5 the Navigator and Exchange Assister Accessibility and Regulation  
6 Act.

7 "Exchange authority." The Pennsylvania Health Insurance  
8 Exchange Authority established under section 9302(a) (relating  
9 to Pennsylvania Health Insurance Exchange Authority).

10 "Exchange fund." The Pennsylvania Health Insurance Exchange  
11 Fund established under section 9312 (relating to exchange fund).

12 "Federal acts." The Affordable Care Act and any amendments  
13 thereto, and related provisions of the Public Health Service Act  
14 (58 Stat. 682, 42 U.S.C. § 201 et seq.).

15 "Government program." A program of government sponsored or  
16 subsidized health care coverage, including:

17 (1) A premium tax credit or cost-sharing subsidy under  
18 the Federal acts.

19 (2) Coverage under Medicare Parts A and B or Medicare  
20 Advantage Part C under Title XVIII of the Social Security Act  
21 (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

22 (3) A TRICARE or other health care plan provided through  
23 the Civilian Health and Medical Program of the Uniformed  
24 Services (CHAMPUS) as defined under 10 U.S.C. § 1072  
25 (relating to definitions).

26 (4) A health care plan provided through the Federal  
27 Employees Health Benefits Program established under 5 U.S.C.  
28 Ch. 89 (relating to health insurance).

29 (5) The Commonwealth's medical assistance program  
30 established under the act of June 13, 1967 (P.L.31, No.21),

1 known as the Human Services Code.

2 (6) The Children's Health Insurance Program.

3 (7) Health care coverage provided by the Commonwealth, a  
4 county, a city, or other State or local governmental entity  
5 or an agency, subdivision or department of a governmental  
6 entity, including:

7 (i) a corporation or other arrangement organized by  
8 the entity for the provision of health care coverage and  
9 subject to control by the entity or an instrumentality of  
10 one or more of them;

11 (ii) the Pennsylvania Employee Benefit Trust Fund  
12 for active and retired employees; and

13 (iii) benefit programs administered by the  
14 Department of Corrections.

15 "Grandfathered health care plan." Individual or group health  
16 insurance coverage in which an individual was enrolled prior to  
17 the date of enactment of the Affordable Care Act, or as  
18 otherwise specified in section 1251 of the Affordable Care Act  
19 (42 U.S.C. § 18011).

20 "Health care plan." A package of coverage benefits with a  
21 particular cost-sharing structure, network and service area that  
22 is purchased through a health insurance policy.

23 "Health insurance policy." A policy, subscriber contract,  
24 certificate or plan issued by an insurer that provides hospital  
25 or medical/surgical health care coverage. The term does not  
26 include any of the following:

27 (1) An accident only policy.

28 (2) A credit only policy.

29 (3) A long-term care or disability income policy.

30 (4) A specified disease policy.

- 1           (5) A Medicare supplement policy.
- 2           (6) A fixed indemnity policy.
- 3           (7) An adult-only dental only policy.
- 4           (8) A vision only policy.
- 5           (9) A workers' compensation policy.
- 6           (10) An automobile medical payment policy.
- 7           (11) A policy under which benefits are provided by the  
8 Federal Government to active or former military personnel and  
9 their dependents.
- 10          (12) Any other similar policies providing for limited  
11 benefits.
- 12          "Hospital plan corporation." An entity organized and  
13 operating under Chapter 61 (relating to hospital plan  
14 corporations).
- 15          "Individual market." The market for health insurance  
16 coverage offered to individuals other than in connection with a  
17 group.
- 18          "Innovation waiver." A waiver applied for pursuant to  
19 section 1332 of the Affordable Care Act (42 U.S.C. §18052).
- 20          "Insurance producer." The term has the meaning given to it  
21 in section 601-A of the act of May 17, 1921 (P.L.789, No.285),  
22 known as The Insurance Department Act of 1921.
- 23          "Insurer." An entity that offers, issues or renews an  
24 individual or group health, accident or sickness insurance  
25 policy, contract or plan, and that is governed under any of the  
26 following:
- 27               (1) Chapter 61.
- 28               (2) Chapter 63 (relating to professional health services  
29 plan corporations).
- 30               (3) The Insurance Company Law of 1921, including section

1 630 and Article XXIV.

2 (4) The act of December 29, 1972 (P.L.1701, No.364),  
3 known as the Health Maintenance Organization Act.

4 "Medical assistance program." The Commonwealth's medical  
5 assistance program established under the Human Services Code.

6 "Professional health services plan corporation." An entity  
7 organized and operating under Chapter 63.

8 "Qualified enrollee." A qualified employee or qualified  
9 individual, as defined in section 1312(f) of the Affordable Care  
10 Act and regulations promulgated under that act.

11 "Qualified plan." A plan as defined in section 1301(a) of  
12 the Affordable Care Act that provides health care or dental care  
13 coverage that has been certified by the department as meeting  
14 the criteria set forth in this part and any regulations issued  
15 pursuant to this part.

16 "Reinsurance cap." The upper limit amount for claims costs  
17 incurred by an eligible insurer for an enrolled individual's  
18 covered benefits in a benefit year, over which the claims costs  
19 for benefits are no longer eligible for reinsurance payments  
20 under the reinsurance program.

21 "Reinsurance-eligible enrollee." An enrollee who is insured  
22 in a reinsurance-eligible health care plan under this part.

23 "Reinsurance-eligible health care plan." A health care plan  
24 that is not a grandfathered health care plan.

25 "Reinsurance payment." An amount paid by the reinsurance  
26 program to an eligible insurer under the program.

27 "Reinsurance program." The Commonwealth Health Insurance  
28 Reinsurance Program established under section 9502(b) (relating  
29 to implementation of waiver and establishment of reinsurance  
30 program).

1 "Small group market." The market for health insurance for  
2 coverage offered through a group health insurance policy for a  
3 group of least two individuals and up to 50 individuals,  
4 exclusive of dependents.

5 CHAPTER 93

6 STATE-BASED EXCHANGE

7 Sec.

8 9301. Scope of chapter.

9 9302. Pennsylvania Health Insurance Exchange Authority.

10 9303. Advisory council.

11 9304. Meetings and operation.

12 9305. Powers and duties of exchange authority.

13 9306. Limitations.

14 9307. Confidentiality and disclosure.

15 9308. Not an entitlement.

16 9309. Nonliability.

17 9310. Audits.

18 9311. Reports.

19 9312. Exchange fund.

20 9313. Federal guidance.

21 9314. Expiration.

22 § 9301. Scope of chapter.

23 This chapter relates to the Pennsylvania Health Insurance  
24 Exchange Authority.

25 § 9302. Pennsylvania Health Insurance Exchange Authority.

26 (a) Establishment.--The Pennsylvania Health Insurance  
27 Exchange Authority is established as a State-affiliated entity.  
28 The powers and duties of the exchange authority shall be vested  
29 in and exercised by a board, which shall have the sole power  
30 under section 9305 (relating to powers and duties of exchange



1 authority) to employ staff, including an executive director.  
2 Individuals employed by the exchange authority shall be  
3 employees of the Commonwealth. The exchange authority may  
4 contract with persons or entities, including legal counsel,  
5 consultants or service providers, as deemed necessary in the  
6 exchange authority's discretion.

7 (b) Purpose.--The purpose of the exchange authority shall be  
8 to create, manage and maintain in this Commonwealth the  
9 Pennsylvania Health Insurance Exchange to do all of the  
10 following:

11 (1) Benefit the Pennsylvania health insurance market and  
12 persons enrolling in health insurance policies.

13 (2) Facilitate or assist in facilitating the purchase of  
14 on-exchange qualified plans by qualified enrollees in the  
15 individual market or the individual and small group markets.

16 (c) Composition.--The board shall consist of the following  
17 members:

18 (1) Three voting members who shall be the following  
19 heads of agencies or a designee who shall be an employee of  
20 the agency designated in writing by the head of the agency  
21 prior to service:

22 (i) The commissioner, ex-officio.

23 (ii) The Secretary of Human Services, ex-officio.

24 (iii) The Secretary of Health, ex-officio.

25 (2) Four voting members appointed by the Governor:

26 (i) One member from among the insurers that offer  
27 health insurance policies through the exchange that are a  
28 hospital plan corporation, a professional health services  
29 plan corporation or a parent, affiliate, subsidiary or  
30 other associated entity or successor of a hospital plan

1 corporation or a professional health services plan.

2 (ii) One member from among the insurers that offer  
3 health insurance policies through the exchange that are  
4 not a hospital plan corporation, a professional health  
5 services plan corporation or a parent, affiliate,  
6 subsidiary or other associated entity or successor of a  
7 hospital plan corporation or a professional health  
8 services plan.

9 (iii) One member with experience in health care  
10 public education and consumer assistance activities who  
11 does not have a conflict of interest as described in  
12 subsection (k).

13 (iv) One member who is a consumer representative.

14 (3) Four voting members appointed by the General  
15 Assembly each with relevant experience in health benefits  
16 administration, health care finance, health care plan  
17 purchasing, health care delivery system administration,  
18 public health or health policy related to the individual and  
19 small group markets and the uninsured:

20 (i) One member appointed by the President pro  
21 tempore of the Senate.

22 (ii) One member appointed by the Minority Leader of  
23 the Senate.

24 (iii) One member appointed by the Speaker of the  
25 House of Representatives.

26 (iv) One member appointed by the Minority Leader of  
27 the House of Representatives.

28 (4) The executive director shall attend meetings of the  
29 board but shall not be a member, may not vote and may not be  
30 counted for purposes of establishing a quorum.

1 (d) Chairperson.--The commissioner or a designee shall serve  
2 as chairperson.

3 (e) Compensation.--Board members shall not be entitled to  
4 any compensation for their services as members, except that,  
5 subject to the availability of funds, board members shall be  
6 entitled to reimbursement for actual and necessary travel  
7 expenses. The expenses shall be paid for by the exchange fund.

8 (f) Terms.--The terms of the board members shall be as  
9 follows:

10 (1) A board member appointed under subsection (c)(2)  
11 who:

12 (i) Is a member of the General Assembly shall serve  
13 a term concurrent with their holding of public office.

14 (ii) Is not a member of the General Assembly shall  
15 serve a term concurrent with their appointing official's  
16 holding of public office.

17 (2) A board member appointed under subsection (c)(3)  
18 shall serve a term of four years, not to exceed more than two  
19 full consecutive four-year terms, except that the following  
20 shall apply:

21 (i) Initial appointments shall be so staggered that  
22 less than 50% of the membership shall expire each year.

23 (ii) A member's term shall continue until the  
24 member's replacement is appointed.

25 (g) Vacancies.--Vacancies in appointed positions shall be  
26 filled in the same manner as the original appointment. Members  
27 shall serve until their successors are appointed and qualified.

28 (h) Formation.--The exchange authority shall be formed  
29 within 60 days of the effective date of this section. Prior to  
30 formation of the exchange authority, the commissioner may take

1 action necessary to effect a timely transition from a federally  
2 administered exchange to the Pennsylvania Health Insurance  
3 Exchange.

4 (i) Quorum.--A majority of the appointed members of the  
5 board shall constitute a quorum. Action may be taken by the  
6 board at a meeting upon a vote of a quorum of its members  
7 present in person or through electronic means. If a tie vote  
8 occurs at any meeting, it shall be the duty of the chairperson  
9 of the board to cast a second and deciding vote.

10 (j) Meetings.--The board shall meet at the call of the  
11 chairperson or as may be provided in the bylaws of the board.  
12 The board shall hold meetings at least quarterly, which shall be  
13 subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to  
14 open meetings).

15 (k) Experience and interests.--For purposes of this chapter,  
16 the board shall assure that it complies with section 1321 of the  
17 Affordable Care Act (42 U.S.C. § 18041) and regulations  
18 promulgated under the Affordable Care Act regarding conflicts of  
19 interest and relevant experience.

20 (l) Conflict of interest.--The following apply:

21 (i) Except as provided under subparagraph (ii), a non-  
22 State employee board member shall not be subject to 65  
23 Pa.C.S. Ch. 11 (relating to ethics standards and financial  
24 disclosure), including the requirements for filing statements  
25 of financial interests.

26 (ii) A non-State employee board member may not engage in  
27 conduct that, if that member were a State employee, would  
28 constitute a conflict of interest under 65 Pa.C.S. Ch. 11.

29 (iii) A majority of the voting members of the board may  
30 not have a conflict of interest as set forth in section 1321

1 of the Affordable Care Act and regulations promulgated under  
2 the Affordable Care Act.

3 § 9303. Advisory council.

4 (a) Establishment.--An advisory council is created to advise  
5 the exchange authority under section 9304(g) (relating to  
6 meetings and operation).

7 (b) Composition.--The advisory council shall consist of the  
8 following members, who may not be in the employ of the  
9 Commonwealth:

10 (1) Four consumer representatives which include two  
11 representatives appointed by the Governor at least one of  
12 whom shall be a registered insurance exchange navigator or  
13 assister, one appointed by the President pro tempore of the  
14 Senate and one appointed by the Speaker of the House of  
15 Representatives.

16 (2) One representative selected by the Hospital and  
17 Healthsystem Association of Pennsylvania.

18 (3) One representative selected by the Pennsylvania  
19 Medical Society.

20 (4) One representative selected by the Pennsylvania  
21 Chamber of Business and Industry from a small group employer.

22 (5) One representative selected by the Pennsylvania  
23 Association of Health Underwriters.

24 § 9304. Meetings and operation.

25 (a) Chairperson.--The members of the advisory council shall  
26 annually elect a chairperson from among its membership.

27 (b) Terms of members.--Each member's term shall be four  
28 years, not to exceed more than two full consecutive four-year  
29 terms, except that:

30 (1) Initial appointments shall be staggered to ensure

1 less than 50% of the membership expire each year.

2 (2) A member's term shall continue until the member's  
3 successor is appointed.

4 (c) Meetings.--All meetings of the advisory council shall be  
5 conducted in accordance with 65 Pa.C.S. Ch. 7 (relating to open  
6 meetings), except as provided in this section. Meetings must be  
7 held in accordance with the following:

8 (1) The advisory council shall meet at least twice per  
9 year, with each meeting held prior to a meeting of the board.  
10 Additional meetings may be held upon reasonable notice at  
11 times and locations selected by the board. The council shall  
12 meet at the call of the chairperson or upon written request  
13 of three members of the council.

14 (2) The executive director of the exchange authority, or  
15 a designee, shall attend each meeting of the advisory  
16 council.

17 (3) Meeting dates shall be set by a majority vote of  
18 members of the advisory council or by call of the chairperson  
19 upon seven days' notice to all members.

20 (4) The advisory council shall post notice of the  
21 council's meetings on the exchange authority's publicly  
22 accessible Internet website at least five days prior to each  
23 meeting. The notice must specify the date, time and place of  
24 the meeting and shall state that the council's meetings are  
25 open to the general public.

26 (5) All action taken by the advisory council shall be  
27 taken in open public session and may not be taken except upon  
28 a majority vote of the members present at a meeting at which  
29 a quorum is present.

30 (d) Compensation.--The members of the advisory council shall

1 not be entitled to any compensation for their services as  
2 members, except that, subject to the availability of money, the  
3 members of the advisory council shall be entitled to  
4 reimbursement for actual and necessary travel expenses. The  
5 expenses shall be paid for by the exchange fund.

6 (e) Vacancies.--Vacancies in appointed positions shall be  
7 filled in the same manner as the original appointment. Members  
8 shall serve until their successors are appointed and qualified.

9 (f) Quorum.--A majority of the advisory council members  
10 shall constitute a quorum and a quorum may act for the advisory  
11 council in all matters.

12 (g) Duties.--Upon request by the exchange authority, the  
13 advisory council shall advise the exchange authority on the  
14 following administrative and operational decisions:

15 (1) Initial operational decisions.

16 (2) Ongoing financing decisions.

17 (3) Other decisions as the exchange authority may deem  
18 appropriate.

19 § 9305. Powers and duties of exchange authority.

20 (a) Corporate operations.--The exchange authority shall  
21 exercise all powers and duties necessary and appropriate to  
22 carry out its purpose, including the following:

23 (1) Adopt bylaws.

24 (2) Employ staff.

25 (3) Make, execute and deliver contracts.

26 (4) Apply for, solicit and receive money from any source  
27 consistent with the purpose of this chapter.

28 (5) Establish priorities for, allocate and disburse  
29 money received.

30 (6) Submit annually to the Appropriations Committee of

1 the Senate and the Appropriations Committee of the House of  
2 Representatives, at the same time the exchange authority  
3 submits its budget to the Governor, a copy of its budget  
4 request and all subsequently revised budget requests for the  
5 ensuing fiscal year. The budget shall include the amounts to  
6 be appropriated out of the fund established under section  
7 9312 (relating to exchange fund) necessary to administer the  
8 provisions of this chapter and the conveyance of money to the  
9 Reinsurance Fund established under section 9510 (relating to  
10 Reinsurance Fund).

11 (7) Establish travel reimbursement policies for the  
12 exchange authority, its board, and its advisory council.

13 (8) Coordinate with the appropriate Federal and State  
14 agencies to seek waivers from statutory or regulatory  
15 requirements as necessary to carry out the purposes of this  
16 chapter.

17 (9) Enter into other arrangements, including without  
18 limitation, interagency agreements with Federal agencies and  
19 Commonwealth agencies or other states' agencies, as may be  
20 necessary or appropriate to carry out the duties of the  
21 exchange authority.

22 (10) Give reasonable public notice of any policies and  
23 procedures the exchange authority may implement to accomplish  
24 the operation of the exchange authority.

25 (11) Perform other operational activities necessary or  
26 appropriate to further the purposes of this chapter.

27 (12) The board shall consider the advice of the advisory  
28 council provided under section 9304(g) (relating to meetings  
29 and operation).

30 (b) Programmatic duties.--The exchange authority shall



1 perform all duties necessary or appropriate to advance its  
2 purpose, including the following:

3 (1) Educate consumers, including through outreach, a  
4 navigator program and postenrollment support.

5 (2) Assist individuals to access income-based assistance  
6 for which they may be eligible, including premium tax  
7 credits, cost-sharing reductions and government programs.

8 (3) Take into consideration the need for consumer choice  
9 in rural, urban and suburban areas across the Commonwealth.

10 (4) Assess and collect fees from on-exchange insurers to  
11 support the operation of the exchange under this chapter and  
12 the reinsurance program established under section 9502(b)  
13 (relating to implementation of waiver and establishment of  
14 reinsurance program), except that the exchange authority may  
15 not assess or collect any form of obligation other than an  
16 exchange user fee on total monthly premiums for on-exchange  
17 policies and unless approved by unanimous consent of the  
18 board, the fee may not exceed 3% of total monthly premiums  
19 for on-exchange policies.

20 (5) Disburse receipted fees, including to benefit the  
21 reinsurance program established under section 9502(b).

22 (c) Enforcement and State sovereignty.--The exchange  
23 authority shall ensure that the exchange complies with the  
24 Federal acts and rules and regulations that may be imposed by  
25 the Federal Government pursuant to the Federal acts in a manner  
26 that maintains State sovereignty over the health insurance  
27 market in this Commonwealth. Enforcement responsibilities shall  
28 be delegated to the appropriate State agency and shall be  
29 sufficient to prevent a determination by the United States  
30 Secretary of Health and Human Services that the Commonwealth has

1 failed to substantially enforce any provision of the Federal  
2 acts.

3 § 9306. Limitations.

4 Except as expressly provided in this chapter, nothing in this  
5 chapter shall be construed to limit or supersede the exchange  
6 authority vested in a Commonwealth agency, including:

7 (1) The Insurance Department, including the department's  
8 authority to regulate the business of insurance within this  
9 Commonwealth, including health insurance policies whether  
10 offered on or off the exchange.

11 (2) The Department of Human Services, including with  
12 respect to the medical assistance program or the Children's  
13 Health Insurance Program.

14 (3) The Department of Health.

15 (4) The Office of Attorney General.

16 § 9307. Confidentiality and disclosure.

17 (a) General rule.--Except as provided in this chapter, all  
18 working papers, recorded information, documents and copies of  
19 working papers, recorded information and documents produced by,  
20 obtained by or disclosed to the exchange authority or any other  
21 person in the course of the exercise of the exchange authority's  
22 powers and duties under this chapter:

23 (1) shall be confidential;

24 (2) shall not be subject to subpoena;

25 (3) shall not be subject to the act of February 14, 2008  
26 (P.L.6, No.3), known as the Right-to-Know Law;

27 (4) shall not be subject to discovery or admissible in  
28 evidence in any private civil action; and

29 (5) may not be made public by the exchange authority or  
30 any other person.

1 (b) Personal health and financial information.--The exchange  
2 authority shall protect personally identifiable health and  
3 financial information in accordance with all applicable Federal  
4 and State laws and regulations, including the Health Insurance  
5 Portability and Accountability Act of 1996 (Public Law 104-191,  
6 110 Stat. 1936), the Health Information Technology for Economic  
7 and Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and  
8 467-496) and implementing regulations.

9 (c) Information disclosure.--Subject to the confidentiality  
10 provisions of this section:

11 (1) Information shall be shared, as appropriate, for the  
12 purpose of determining and coordinating the eligibility of  
13 individuals for the exchange or any government program,  
14 including the Children's Health Insurance Program and medical  
15 assistance program, or for compliance with Federal law:

16 (i) Among the exchange authority and departments,  
17 including:

18 (A) The department.

19 (B) The Department of Aging.

20 (C) The Department of Drug and Alcohol Programs.

21 (D) The Department of Health.

22 (E) The Department of Human Services.

23 (F) The Department of Labor and Industry.

24 (G) The Department of Revenue.

25 (ii) Between the exchange authority and Federal  
26 agencies, including:

27 (A) The Centers for Medicare and Medicaid  
28 Services.

29 (B) The Treasury Department.

30 (2) Information may be disclosed:

1           (i) As necessary to comply with the audit  
2           requirements of section 9310 (relating to audits) and the  
3           reporting requirements of section 9311 (relating to  
4           reports), only in an aggregated and de-identified form.

5           (ii) In any circumstance, other than those described  
6           in paragraph (1) or subparagraph (i), only if the prior  
7           written consent of the company or person to which the  
8           information pertains has been obtained.

9           (d) Construction.--Nothing in this section shall be  
10          construed to prohibit the exchange authority from accessing the  
11          information necessary to carry out its responsibilities in  
12          accordance with law.

13          § 9308. Not an entitlement.

14          Nothing in this chapter shall constitute an entitlement  
15          derived from the Commonwealth or a claim on any money of the  
16          Commonwealth.

17          § 9309. Nonliability.

18          (a) General rule.--Except as provided under subsection (b),  
19          there shall be no liability on the part of and no cause of  
20          action of any nature may arise against the exchange authority,  
21          board or advisory council or members thereof, the commissioner,  
22          the department, an insurer, insurance producer or an exchange  
23          assister or an authorized representative, agent or employee  
24          thereof, for the use of information furnished pertaining to:

25                  (1) An application for, inquiry concerning, or  
26                  enrollment or disenrollment in a health insurance policy or  
27                  government program, including an inquiry regarding  
28                  eligibility for enrollment or eligibility for a government  
29                  program, relevant to health insurance available through an  
30                  exchange or health care coverage or other benefits through a

1 government program.

2 (2) A charge, assessment or fee imposed on or received  
3 from a person or entity relevant to the exchange.

4 (b) Limitation.--Subsection (a) shall apply only insofar as  
5 the person or entity is acting within the scope of the person's  
6 or entity's duties and responsibilities under this chapter.

7 § 9310. Audits.

8 (a) Annual audit.--The accounts and books of the exchange  
9 authority shall be examined and audited annually by an  
10 independent certified public accounting firm. The audit shall at  
11 a minimum:

12 (1) Assess compliance with the requirements of this  
13 chapter.

14 (2) Identify any material weaknesses or significant  
15 deficiencies and identify ways to correct the material  
16 weaknesses or deficiencies.

17 (b) Sharing of audit.--By December 31 of each year, the  
18 exchange authority shall electronically share the audit of the  
19 preceding fiscal year required under subsection (a) and related  
20 documents by:

21 (1) Posting the following on the exchange authority's  
22 publicly accessible Internet website:

23 (i) The audit.

24 (ii) A summary of the audit, including any material  
25 weakness or significant deficiency identified and how the  
26 exchange authority intends to correct the material  
27 weakness or significant deficiency.

28 (2) Providing an electronic link to the posted audit  
29 under paragraph (1)(i) to the Secretary of the Senate and the  
30 Chief Clerk of the House of Representatives.

1           (3) Providing an electronic link to the posted audit  
2           under paragraph (1)(i) to the department.

3           (c) Payment.--The cost of the annual audit required under  
4           subsection (a) shall be paid for from money in the exchange  
5           fund.

6           § 9311. Reports.

7           (a) Report.--The exchange authority shall prepare an annual  
8           report on the activities of the exchange authority for the year  
9           and:

10           (1) Electronically transmit the report to:

11           (i) The Governor.

12           (ii) The President pro tempore of the Senate.

13           (iii) The Minority Leader of the Senate.

14           (iv) The Speaker of the House of Representatives.

15           (v) The Minority Leader of the House of

16           Representatives.

17           (vi) The chair and minority chair of:

18           (A) The Appropriations Committee of the Senate.

19           (B) The Appropriations Committee of the House of  
20           Representatives.

21           (C) The Banking and Insurance Committee of the  
22           Senate.

23           (D) The Insurance Committee of the House of  
24           Representatives.

25           (E) The Health and Human Services Committee of  
26           the Senate.

27           (F) The Health Committee of the House of  
28           Representatives.

29           (2) Post the report on the exchange authority's publicly  
30           accessibility Internet website.

1 (b) Federal compliance.--The exchange authority shall comply  
2 with applicable Federal reporting requirements.

3 (c) Department notification.--The exchange authority shall  
4 provide a copy of or electronic link to the report provided  
5 under subsection (a) or (b) to the department.

6 § 9312. Exchange fund.

7 (a) Establishment.--The Pennsylvania Health Insurance  
8 Exchange Fund is established as a special fund within the State  
9 Treasury. The exchange fund shall be administered by the  
10 exchange authority for the purposes set forth in this chapter,  
11 including the deposit of money that may be received pursuant to  
12 and disbursements permitted by this chapter.

13 (b) Deposit and use of money.--The following apply:

14 (1) Money deposited into the exchange fund shall be held  
15 for the purposes set forth in this chapter and may not be  
16 considered a part of the General Fund.

17 (2) Money in the exchange fund may only be used to  
18 effectuate the purposes of this chapter as determined by the  
19 exchange authority.

20 (3) All interest earned from the investment or deposit  
21 of money in the exchange fund shall be deposited into the  
22 exchange fund.

23 (4) All accrued and future earnings from money invested  
24 by the exchange authority and other accrued and future  
25 earnings from nonappropriated money, including, but not  
26 limited to, money obtained from the Federal Government and  
27 fees, shall be available to the exchange authority and shall  
28 be deposited into the State Treasury and may be utilized at  
29 the discretion of the board for carrying out any of the  
30 corporate purposes of the exchange authority.

1           (5) Placement of money by the State Treasurer in  
2 depositories or investments shall be consistent with  
3 guidelines approved by the board.

4           (6) For the purpose of administration, the exchange  
5 authority shall be subject to sections 610, 613 and 614 of  
6 act of April 9, 1929 (P.L.177, No.175), known as The  
7 Administrative Code of 1929.

8           (c) Nonlapsing and revolving fund.--The exchange fund shall  
9 be a nonlapsing fund. All money in the exchange fund and  
10 interest accrued are appropriated to the exchange authority for  
11 expenditure consistent with this chapter.

12 § 9313. Federal guidance.

13           Until the exchange authority promulgates regulations, the  
14 exchange authority shall operate the exchange pursuant to:

15           (1) any applicable Federal rules, regulations or  
16 guidance; or

17           (2) interim State guidelines consistent with this  
18 chapter.

19 § 9314. Expiration.

20           Upon publication of the notice under section 9703(b)  
21 (relating to action by commissioner), the exchange authority  
22 shall initiate steps to cease operations of the exchange  
23 authority and shall cease operations not later than 15 months  
24 after publication of the notice.

25   CHAPTER 95

26   REINSURANCE PROGRAM

27 Sec.

28 9501. Application.

29 9502. Implementation of waiver and establishment of reinsurance  
30 program.



1 9503. Administration and operation of reinsurance program.

2 9504. Reinsurance parameters.

3 9505. Insurer eligibility and duties.

4 9506. Payment of coverage and administrative costs.

5 9507. Not an entitlement.

6 9508. Annual audit.

7 9509. Annual report of operations.

8 9510. Reinsurance Fund.

9 9511. Procurements within one year.

10 9512. Access to information and records.

11 9513. Confidentiality and information disclosure.

12 9514. Immunity.

13 9515. Regulation of insurers.

14 9516. Expiration.

15 § 9501. Application.

16 (a) Application.--The department is authorized to apply to  
17 the United States Secretary of Health and Human Services under  
18 section 1332 of the Affordable Care Act for a state innovation  
19 waiver to:

20 (1) Waive any applicable provisions of the Affordable  
21 Care Act with respect to health insurance coverage in this  
22 Commonwealth.

23 (2) Establish a reinsurance program in accordance with  
24 an approved waiver.

25 (3) Maximize Federal funding for the reinsurance program  
26 for plan years beginning on or after implementation of the  
27 program.

28 (b) Public review.--On or before 180 days after the  
29 effective date of this section, the department shall make a  
30 draft application available for a 30-day public review and

1 comment period. The department shall consider any comments in  
2 its final submitted application.

3 (c) Amendment.--The department may amend the waiver  
4 application as necessary to carry out the provisions of this  
5 chapter.

6 (d) Notification.--The department shall notify the chair and  
7 minority chair of the Appropriations Committee of the Senate,  
8 the chair and minority chair of the Appropriations Committee of  
9 the House of Representatives, the chair and minority chair of  
10 the Banking and Insurance Committee of the Senate and the chair  
11 and minority chair of the Insurance Committee of the House of  
12 Representatives promptly of any amendment to the waiver  
13 application and of any Federal actions regarding the waiver  
14 application.

15 § 9502. Implementation of waiver and establishment of  
16 reinsurance program.

17 (a) Implementation.--Upon approval of the department's  
18 application for an innovation waiver by the United States  
19 Department of Health and Human Services, the department shall  
20 implement a reinsurance program.

21 (b) Establishment.--Contingent upon Federal approval, the  
22 Commonwealth Health Insurance Reinsurance Program is established  
23 in the department for the purposes of stabilizing the rates and  
24 premiums for health insurance policies in the individual market  
25 and providing greater financial certainty to consumers of health  
26 insurance in this Commonwealth. The reinsurance program shall be  
27 considered a reinsurance entity to carry out a reinsurance  
28 program under the Federal acts.

29 (c) Operation.--Operation of a reinsurance program shall be  
30 contingent on Federal approval of the waiver application

1 submitted pursuant to section 9501 (relating to application).  
2 § 9503. Administration and operation of reinsurance program.

3 (a) General rule.--The department shall take all actions  
4 necessary to administer the approved reinsurance program in a  
5 manner consistent with applicable Federal and State law.

6 (b) Functions.--The department shall perform all functions  
7 necessary and appropriate to carry out the operation of the  
8 reinsurance program and to effectuate the purposes for which the  
9 reinsurance program is organized, in accordance with the  
10 approved waiver. The functions include:

11 (1) Establishing procedures for and performing  
12 administrative and accounting operations of the reinsurance  
13 program.

14 (2) Seeking and receiving funding for the reinsurance  
15 program and to maximize Federal funding for the reinsurance  
16 program, including from:

17 (i) The exchange authority.

18 (ii) Federal funding that is or becomes available to  
19 states to support administration and implementation of  
20 state-based reinsurance programs.

21 (iii) Other available sources.

22 (3) Collecting data submissions and reinsurance payment  
23 requests by eligible insurers.

24 (4) Making reinsurance payments to eligible insurers.

25 (5) Resolving disputes related to the amount of  
26 reinsurance payments.

27 (6) Suing or being sued, including taking any legal  
28 action necessary or proper for the recovery of money for  
29 reinsurance payments.

30 (7) Submitting invoices or other requests for money as

1 may be necessary and appropriate under the innovation waiver.

2 (c) Delegation.--Except as prohibited by applicable Federal  
3 law and regulation, and as may be necessary or appropriate to  
4 carry out department duties, the department may administer the  
5 reinsurance program directly or through:

6 (1) Other Federal agencies, Commonwealth agencies or  
7 other states' agencies.

8 (2) Contracted persons or entities, including with  
9 legal, actuarial, economic, third-party administrator or  
10 other persons or entities, as the department deems  
11 appropriate, to provide consultation services and technical  
12 assistance in operating the reinsurance program. Contracted  
13 persons or entities shall submit regular reports to the  
14 department regarding the person's or entity's performance,  
15 the frequency, content and form of which shall be determined  
16 by the department.

17 (d) Coordination with exchange authority.--The department  
18 shall coordinate with the exchange authority as may be necessary  
19 to fund and operate the reinsurance program.

20 § 9504. Reinsurance parameters.

21 (a) Adoption of reinsurance terms.--The department shall,  
22 after consultation with all insurers then currently  
23 participating in the exchange, and not less than 60 days before  
24 final rates for health insurance policies are required to be  
25 submitted each year, determine and adopt the attachment point,  
26 reinsurance cap and coinsurance rate applicable to the  
27 reinsurance program for the following year.

28 (b) Parameters.--In determining the attachment point,  
29 reinsurance cap and coinsurance rate applicable to the  
30 reinsurance program for the following year, the department shall

1 seek to:

2 (1) Manage the program within the amount of total  
3 program funding available to the department.

4 (2) With respect to the individual market:

5 (i) Mitigate the impact of high-cost claims on  
6 premium rates.

7 (ii) Stabilize or reduce premium rates.

8 (iii) Increase participation.

9 (c) Publication and notice.--The department shall transmit  
10 notice of the adopted attachment point, reinsurance cap and  
11 coinsurance rate to the Legislative Reference Bureau for  
12 publication in the Pennsylvania Bulletin and shall:

13 (1) Post notice on the department's publicly accessible  
14 Internet website.

15 (2) Electronically send notice to the chair and minority  
16 chair of the Banking and Insurance Committee of the Senate  
17 and the chair and minority chair of the Insurance Committee  
18 of the House of Representatives.

19 (3) Electronically send notice to each participating  
20 insurer via a contact person or electronic mailing address,  
21 as identified by the insurer.

22 (d) Limitation.--After the department adopts the attachment  
23 point, reinsurance cap and coinsurance rate for the next year,  
24 the department may not, before or during that benefit year,  
25 change the attachment point, reinsurance cap or coinsurance rate  
26 in a manner less favorable to the insurers participating in the  
27 exchange at the time of adoption.

28 § 9505. Insurer eligibility and duties.

29 (a) Eligibility for payment.--An insurer shall be eligible  
30 for a reinsurance payment if:

1           (1) The claims costs for a reinsurance-eligible  
2 enrollee's covered benefits in a benefit year exceed the  
3 attachment point.

4           (2) The eligible insurer has implemented and documented  
5 reasonable care management practices for enrollees who are  
6 the subject of reinsurance claims through the reinsurance  
7 program.

8           (3) The eligible insurer makes its requests for  
9 reinsurance payments in accordance with any requirements  
10 established by the department including requirements related  
11 to the format, structure and timing for submission of claims  
12 for reinsurance payments.

13       (b) Reporting requirement.--An insurer that seeks  
14 reinsurance payments under this chapter must report to the  
15 department, in the form and manner prescribed by the department,  
16 information about reinsurance-eligible enrollees insured by the  
17 insurer as necessary for the department to calculate reinsurance  
18 payments.

19       (c) Confidentiality.--Reinsurance claims submitted under  
20 this section are confidential and are not subject to public  
21 disclosure, except as provided under section 9514 (relating to  
22 immunity).

23       (d) Consideration for rate filings.--In a rate filing for a  
24 health insurance policy to be offered through the exchange, the  
25 impact of reinsurance payments under this chapter shall be  
26 identified.

27       (e) Limitation.--The calculation of reinsurance payments due  
28 to an eligible insurer shall be net of all other available  
29 insurance payments applicable to a claim, including insurance  
30 accessible through subrogation or coordination of benefits.

1 § 9506. Payment of coverage and administrative costs.

2 (a) General rule.--Consistent with Federal requirements, the  
3 department shall pay the following from the Reinsurance Fund:

4 (1) Administrative expenses of the reinsurance program,  
5 including the annual audit required under section 9508  
6 (relating to annual audit).

7 (2) Reinsurance payments for coverage of reinsurance-  
8 eligible enrollees.

9 (b) Operations.--The department may promulgate regulations  
10 necessary and appropriate to establish processes for the  
11 settlement of reinsurance coverage claims and disbursement of  
12 reinsurance money.

13 (c) Request for review.--An insurer that is aggrieved by a  
14 determination of the department relating to the amount of  
15 reinsurance payments due to the insurer may file a request for  
16 administrative review of the decision. The procedures and  
17 requirements of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice  
18 and procedure of Commonwealth agencies) shall apply to requests  
19 for review filed under this section. Notwithstanding otherwise  
20 applicable time limitations, in order to permit timely  
21 finalization of rates for the open enrollment period for the  
22 exchange, a challenge to the department's determination of the  
23 attachment point, reinsurance cap and coinsurance rate published  
24 in the Pennsylvania Bulletin under section 9504(c) (relating to  
25 reinsurance parameters) must be made within 10 business days of  
26 the date of publication.

27 § 9507. Not an entitlement.

28 (a) No entitlement.--The provision of reinsurance program  
29 money or benefits accrued through the Reinsurance Fund may not  
30 constitute an entitlement derived from the Commonwealth or a

1 claim on any other money of the Commonwealth.

2 (b) Contingency with respect to Federal money.--

3 Notwithstanding any provision of this chapter, the department  
4 shall have no responsibility to pay reinsurance amounts that  
5 would be payable out of Federal money if the Federal Government  
6 does not transmit sufficient money for the Reinsurance Fund to  
7 fully recompense those actions.

8 § 9508. Annual audit.

9 (a) Annual audit.--The reinsurance program shall be examined  
10 and audited annually by an independent certified public  
11 accounting firm. The audit shall, at a minimum:

12 (1) Assess compliance with the requirements of this  
13 chapter.

14 (2) Identify any material weaknesses or significant  
15 deficiencies and identify and implement solutions to correct  
16 the the material weaknesses or deficiencies.

17 (b) Sharing of audit.--By December 31 of each year, the  
18 department shall electronically share the audit of the preceding  
19 fiscal year required under subsection (a) and related documents  
20 by:

21 (1) Posting the following on the department's publicly  
22 accessible Internet website:

23 (i) The audit.

24 (ii) A summary of the audit, including any material  
25 weakness or significant deficiency identified and how the  
26 department intends to correct the material weakness or  
27 significant deficiency.

28 (2) Providing an electronic link to the posted audit  
29 under paragraph (1)(i) to the Secretary of the Senate and the  
30 Chief Clerk of the House of Representatives.



1 (c) Payment.--The cost of the annual audit required under  
2 subsection (a) shall be paid for from money in the Reinsurance  
3 Fund.

4 § 9509. Annual report of operations.

5 (a) Report.--No later than November 1 of the year following  
6 the applicable benefit year or 60 calendar days following the  
7 final disbursement of reinsurance payments for the applicable  
8 benefit year, whichever is later, the department shall prepare a  
9 financial report for the applicable benefit year. The report  
10 must include, at a minimum, the following information for the  
11 benefit year that is the subject of the report:

12 (1) Money deposited into the Reinsurance Fund.

13 (2) Requests for reinsurance payments received from  
14 eligible insurers.

15 (3) Reinsurance payments made to eligible insurers.

16 (4) Administrative and operational expenses incurred for  
17 the reinsurance program.

18 (b) Distribution of report.--The department shall:

19 (1) Electronically transmit the report under subsection  
20 (a) to:

21 (i) The President pro tempore of the Senate.

22 (ii) The Minority Leader of the Senate.

23 (iii) The Speaker of the House of Representatives.

24 (iv) The Minority Leader of the House of  
25 Representatives.

26 (v) The chair and minority chair of the  
27 Appropriations Committee of the Senate and the chair and  
28 minority chair of the Appropriations Committee of the  
29 House of Representatives.

30 (vi) The chair and minority chair of the Banking and

1 Insurance Committee of the Senate and the chair and  
2 minority chair of the Insurance Committee of the House of  
3 Representatives.

4 (2) Post the report under subsection (a) on the  
5 department's publicly accessible Internet website.

6 § 9510. Reinsurance Fund.

7 (a) Establishment and administration of Reinsurance Fund.--

8 The Reinsurance Fund is established as a special fund within the  
9 State Treasury. The Reinsurance Fund shall be administered by  
10 the department for the purposes set forth in this chapter,  
11 including the deposit of Federal money and all other money  
12 received pursuant to and disbursements permitted by this  
13 chapter.

14 (b) Exclusive purpose.--The Reinsurance Fund shall be  
15 dedicated exclusively for the reinsurance program established  
16 under section 9502(b) (relating to implementation of waiver and  
17 establishment of reinsurance program).

18 (c) Use.--The following apply:

19 (1) Expenditures from the Reinsurance Fund shall be used  
20 to:

21 (i) Implement and operate the reinsurance program.

22 (ii) Make reinsurance payments to eligible insurers  
23 under the reinsurance program. Payments to insurers shall  
24 be calculated and made on a pro rata basis.

25 (2) In making expenditures from the Reinsurance Fund,  
26 available Federal money must be expended first.

27 (3) Pending disbursement, money in the Reinsurance Fund  
28 shall be invested or reinvested in the same manner as money  
29 in the custody of the State Treasurer. All earnings received  
30 from the investment or reinvestment of money shall be

1 credited to the Reinsurance Fund.

2 (d) Expenses.--All costs and expenses of the reinsurance  
3 program shall be paid from the Reinsurance Fund, including  
4 compensation of employees and any independent contractors or  
5 consultants hired by the department.

6 (e) Nonlapsing and revolving fund.--The following apply:

7 (1) The Reinsurance Fund shall be a nonlapsing fund. All  
8 money placed in the Reinsurance Fund and interest accrued are  
9 appropriated to the department for expenditure consistent  
10 with the provisions of this chapter.

11 (2) Nothing in this section shall prevent money in the  
12 Reinsurance Fund from being used as a revolving fund to cover  
13 necessary expenditures if Federal money is requested and  
14 committed but not yet received or if other money is committed  
15 but not yet received.

16 (f) Limitations.--The following limitations apply:

17 (1) In each fiscal year, the total amount of annual  
18 expenditures from the Reinsurance Fund, including  
19 administrative and consulting expenses, may not exceed the  
20 amount of expected Federal and other money budgeted for  
21 deposit in the Reinsurance Fund in that fiscal year.

22 (2) Notwithstanding any general or specific powers  
23 granted to the department under this chapter, whether express  
24 or implied, the department may not pledge, in favor of the  
25 reinsurance program, the credit or taxing power of the  
26 Commonwealth or any political subdivision.

27 § 9511. Procurements within one year.

28 Notwithstanding any other provision of law and for the  
29 limited purpose of fulfilling the requirements under this  
30 chapter, procurement of contracts and agreements for the

1 implementation and operation of the reinsurance program  
2 initiated within one year of the effective date of this section  
3 shall not be subject to the provisions of 62 Pa.C.S. (relating  
4 to procurement). No contract or agreement entered into under  
5 this section may exceed a term of five years.

6 § 9512. Access to information and records.

7 (a) Reports and access.--An insurer shall, without charge,  
8 report information and provide access to and furnish records as  
9 the department requests in order for the department to:

10 (1) Prepare the State innovation waiver application  
11 submitted under section 9501(a) (relating to application).

12 (2) Determine reinsurance parameters under section 9504  
13 (relating to reinsurance parameters).

14 (3) Determine the reinsurance payments due to each  
15 insurer.

16 (4) Monitor costs and revenues associated with the  
17 reinsurance program.

18 (5) Administer the reinsurance program.

19 (6) Assure compliance with applicable Federal and State  
20 law.

21 (b) Time period.--The information and records requested  
22 under subsection (a) shall be provided to the department within  
23 30 days of receipt by an insurer of the written request, unless  
24 required at an earlier date for department compliance with a  
25 request from a Federal or other State agency.

26 (c) Use.--Information and records provided to the department  
27 under subsection (a) may only be used for the purposes specified  
28 in subsection (a).

29 (d) Exemptions.--Any instructions, forms or reports issued  
30 by the department and required to be completed by an insurer

1 under this section shall not be subject to:

2 (1) The act of July 31, 1968 (P.L.769, No.240), referred  
3 to as the Commonwealth Documents Law.

4 (2) The act of October 15, 1980 (P.L.950, No.164), known  
5 as the Commonwealth Attorneys Act.

6 (3) The act of June 25, 1982 (P.L.633, No.181), known as  
7 the Regulatory Review Act.

8 § 9513. Confidentiality and information disclosure.

9 (a) General rule.--Except as provided for in this section,  
10 all working papers, recorded information, documents and copies  
11 of working papers, recorded information and documents produced  
12 by, obtained by or disclosed to the department or any other  
13 person in the course of exercising the department's powers and  
14 duties under this chapter:

15 (1) shall be confidential;

16 (2) shall not be subject to subpoena;

17 (3) shall not be subject to the act of February 14, 2008  
18 (P.L.6, No.3), known as the Right-to-Know Law;

19 (4) shall not be subject to discovery or admissible in  
20 evidence in any private civil action; and

21 (5) may not be made public by the department or any  
22 other person.

23 (b) Personal health and financial information.--The  
24 department shall protect personally identifiable health and  
25 financial information in accordance with Federal and State laws  
26 and regulations, including the Health Insurance Portability and  
27 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936),  
28 the Health Information Technology for Economic and Clinical  
29 Health Act (Public Law 111-5, 123 Stat. 226-279 and 467-496) and  
30 implementing regulations.

1 (c) Information disclosure.--Subject to the confidentiality  
2 provisions of this section:

3 (1) Information shall be shared as follows:

4 (i) Between the department and the Centers for  
5 Medicare and Medicaid Services for purposes of compliance  
6 with the Federal acts.

7 (ii) Between the department and each insurer  
8 participating in the reinsurance program.

9 (iii) Between the department and the exchange  
10 authority.

11 (2) Information may be disclosed as follows:

12 (i) As necessary to comply with the audit  
13 requirements of section 9508 (relating to annual audit)  
14 and the reporting requirements of section 9509 (relating  
15 to annual report of operations), only in an aggregated  
16 and de-identified form.

17 (ii) In any circumstance other than as described in  
18 paragraph (1) or subparagraph (i), only if the prior  
19 written consent of the company or person to which the  
20 information pertains is obtained.

21 (d) Construction.--Nothing in this section shall be  
22 construed to prohibit the department from accessing the  
23 information reasonably required to carry out its  
24 responsibilities in accordance with law.

25 § 9514. Immunity.

26 (a) General rule.--Except as provided in subsection (b), the  
27 department, a Commonwealth agency or person or entity under  
28 contract with the department for the reinsurance program, or an  
29 authorized representative, agent or employee of any of them may  
30 not be subject to civil or criminal liability and no cause of

1 action of any nature shall arise for any action taken or not  
2 taken, including any discretionary decision or failure to make a  
3 discretionary decision, when the action or inaction is done in  
4 good faith and in the performance of the powers and duties under  
5 this chapter, or for the reasonable and good faith use of any  
6 information pertaining to the reinsurance program.

7 (b) Exception.--This section shall not prohibit legal  
8 actions against the reinsurance program to enforce the  
9 reinsurance program's statutory or contractual duties or  
10 obligations.

11 § 9515. Regulation of insurers.

12 Nothing in this chapter shall be construed to limit or  
13 supersede the regulatory authority vested with the department to  
14 regulate the business of insurance within this Commonwealth,  
15 including health insurance policies offered on or off the  
16 exchange.

17 § 9516. Expiration.

18 Upon publication of the notice under section 9703(b)  
19 (relating to action by commissioner), the department shall  
20 initiate steps to cease operation of the reinsurance program and  
21 shall cease operation of the reinsurance program no later than  
22 15 months after publication of the notice.

## 23 CHAPTER 97

### 24 MISCELLANEOUS PROVISIONS

25 Sec.

26 9701. Regulations.

27 9702. Enforcement.

28 9703. Action by commissioner.

29 § 9701. Regulations.

30 (a) Authority to promulgate.--The department and the

1 exchange authority may promulgate regulations as may be  
2 necessary and appropriate to carry out the provisions of this  
3 part.

4 (b) Temporary regulations.--The following apply:

5 (1) Notwithstanding any other provision of law, in order  
6 to facilitate the prompt implementation of this part, the  
7 department and the exchange authority may issue temporary  
8 regulations which shall expire no later than two years  
9 following publication of the temporary regulations in the  
10 Pennsylvania Bulletin. The temporary regulations shall be  
11 exempt from the following:

12 (i) Sections 201, 202, 203, 204 and 205 of the act  
13 of July 31, 1968 (P.L.769, No.240), referred to as the  
14 Commonwealth Documents Law.

15 (ii) Sections 204(b) and 310(10) of the act of  
16 October 15, 1980 (P.L.950, No.164), known as the  
17 Commonwealth Attorneys Act.

18 (iii) The act of June 25, 1982 (P.L.633, No.181),  
19 known as the Regulatory Review Act.

20 (2) The authority of the department and the exchange  
21 authority to issue temporary regulations under this  
22 subsection shall expire two years from the effective date of  
23 this section. Regulations adopted after the two-year period  
24 shall be promulgated as provided by statute.

25 § 9702. Enforcement.

26 (a) General rule.--Upon satisfactory evidence of a violation  
27 of this part by an insurer or other person, one or more of the  
28 following penalties may be imposed at the commissioner's  
29 discretion:

30 (1) Suspension or revocation of the license of the



1 insurer or other person.

2 (2) Refusal, for a period not to exceed one year, to  
3 issue a new license to the insurer or other person.

4 (3) A fine of not more than \$5,000 for each violation.

5 (4) A fine of not more than \$10,000 for each willful  
6 violation.

7 (b) Limitation.--

8 (1) Fines imposed against an individual insurer under  
9 this part may not exceed \$500,000 in the aggregate during a  
10 single calendar year.

11 (2) Fines imposed against any other person under this  
12 part may not exceed \$100,000 in the aggregate during a single  
13 calendar year.

14 (c) Additional remedies.--The enforcement remedies imposed  
15 under this subsection are in addition to any other remedies or  
16 penalties that may be imposed under any other applicable law of  
17 this Commonwealth, including:

18 (1) The act of July 22, 1974 (P.L.589, No.205), known as  
19 the Unfair Insurance Practices Act. Violations of this part  
20 shall be deemed to be an unfair method of competition and an  
21 unfair or deceptive act or practice under the Unfair  
22 Insurance Practices Act.

23 (2) The act of June 25, 1997 (P.L.295, No.29), known as  
24 the Pennsylvania Health Care Insurance Portability Act.

25 (d) Administrative procedure.--The administrative provisions  
26 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A  
27 (relating to practice and procedure of Commonwealth agencies). A  
28 party against whom penalties are assessed in an administrative  
29 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.  
30 Ch. 7 Subch. A (relating to judicial review of Commonwealth

1 agency action).

2 § 9703. Action by commissioner.

3 (a) Sunset.--This act shall sunset immediately if any of the  
4 following occur:

5 (1) The Congress of the United States repeals or  
6 defunds, in whole or in part, the Affordable Care Act in a  
7 manner that renders impossible to perform the duties of the  
8 exchange authority established under Chapter 93 (relating to  
9 State-based Exchange) or the reinsurance program established  
10 under Chapter 95 (relating to reinsurance program).

11 (2) A court of the United States with competent  
12 jurisdiction invalidates, in whole or in part, the Affordable  
13 Care Act in a manner that renders impossible to perform the  
14 duties of the exchange authority established under Chapter 93  
15 or the reinsurance program established under Chapter 95.

16 (3) The Executive Branch of the United States repeals or  
17 defunds, in whole or in part, the Affordable Care Act and its  
18 subsequent regulations in a manner that renders impossible to  
19 perform the duties of the exchange authority established  
20 under Chapter 93 or the reinsurance program established under  
21 Chapter 95.

22 (b) Notice.--If this part sunsets pursuant to subsection  
23 (a), the commissioner shall transmit notice of that action to  
24 the Legislative Reference Bureau for publication in the  
25 Pennsylvania Bulletin.

26 Section 2. This act shall take effect immediately.